

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| VIVIAN BERT, et al. | : | Case No. C-1-02-467 |
| | : | |
| Plaintiffs, | : | Judge Beckwith |
| | : | Magistrate Judge Hogan |
| v. | : | |
| | : | |
| AK STEEL CORPORATION | : | MOTION OF AK STEEL |
| | : | CORPORATION TO STRIKE DR. |
| | : | EDWIN BRADLEY'S MARCH 5, |
| Defendant. | : | 2008 DECLARATION AND |
| | : | PRECLUDE ANY RELATED |
| | : | TESTIMONY BY DR. BRADLEY |
| | : | <u>AT TRIAL</u> |

Defendant AK Steel Corporation moves for an Order striking Dr. Edwin Bradley's March 5, 2008 Declaration and precluding testimony by Dr. Bradley at trial relating to the untimely opinions expressed therein. A Memorandum in support of this Motion is attached.

Respectfully submitted,

/s/ Gregory Parker Rogers
Lawrence J. Barty (0016002)
Gregory Parker Rogers (0042323))
Patricia Anderson Pryor (0069545)
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Trial Attorneys for Defendant
AK Steel Corporation

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| Plaintiffs, | : | Judge Beckwith |
| | : | Magistrate Judge Hogan |
| v. | : | |
| | : | |
| AK STEEL CORPORATION | : | MEMORANDUM IN SUPPORT OF |
| | : | AK STEEL CORPORATION'S |
| | : | MOTION TO STRIKE DR. EDWIN |
| Defendant. | : | BRADLEY'S MARCH 5, 2008 |
| | : | DECLARATION AND PRECLUDE |
| | : | ANY RELATED TESTIMONY BY |
| | : | <u>DR. BRADLEY AT TRIAL</u> |

Defendant AK Steel Corporation ("AK Steel") respectfully requests that this Court strike Dr. Edwin Bradley's most recent declaration (dated March 5, 2008) and preclude any testimony by Dr. Edwin Bradley at trial relating to these untimely opinions.

Plaintiffs have submitted numerous "reports" and declarations from their designated expert, Dr. Edwin Bradley. The latest declaration was submitted with Plaintiffs' Opposition to AK Steel's Motion for Summary Judgment on the Claims of the Ashland Plaintiffs and Ashland Class on March 7, 2008. (Doc. # 166) As stated in AK Steel's Reply Memorandum (Doc. # 173), this most recent declaration, presumably the one upon which Plaintiffs now intend to rely, is untimely and does not comply with the Federal Rules of Civil Procedure.

Plaintiffs do not dispute that they produced this latest declaration with new opinions three years after expert reports were due, three months after discovery closed, and two months after motions for summary judgment were filed. Instead Plaintiffs state that their late production of this declaration was caused by AK Steel's alleged "failure to produce requested documents." (Doc. # 166) This is simply false. Although Plaintiffs requested test results from Resource

Associates, a third party, in late August 2007 and received them shortly thereafter, they did not request test results for the pre-employment test now in question from AK Steel.

Moreover, even if Plaintiffs' untimely production of this latest expert opinion could be excused, it does not explain or excuse Dr. Bradley's failure to produce the underlying basis and reasons for his opinions and the data and information considered as required by Federal Rule of Civil Procedure 26(a)(2)(B). Dr. Bradley did not provide the database upon which he based his conclusions. Nor did he provide the data, including the purported number of overall test takers to which he compared the number of successful test takers, on which he based his opinion. His opinions and testimony, even if timely, should be precluded for this reason as well.

For each and all of the foregoing reasons, Defendant AK Steel Corporation respectfully requests that this Court strike Dr. Bradley's March 5, 2008 Declaration and preclude any testimony at trial related to these untimely opinions.

Respectfully submitted,

/s/ Gregory Parker Rogers

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed on April 4, 2008 using the Court's CM/ECF system, which will send notice of this filing to Susan Donahue, Robert Childs, Herman N. Johnson, Jr., Wiggins, Childs, Quinn & Pantazis, P.C., The Kress Building, 301 19th Street North, Birmingham, Alabama 35203; Paul H. Tobias, Tobias, Kraus & Torchia, 911 Mercantile Library Building, 414 Walnut Street, Cincinnati, Ohio 45202; and David Sanford, Sanford, Wittels & Heisler, L.L.P., 2121 K Street, N.W., Suite 700, Washington, D.C. 20037.

/s/ Gregory Parker Rogers